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Ong Ah Teong v Dhinagaran Jayabalan

B HIGH COURT (PULAU PINANG) — CIVIL CASE NO 22NCVC-130–03 OF 2013
AZMI ARIFFIN JC
19 SEPTEMBER 2014

C *Civil Procedure — Amendment — Writ and statement of claim — Claim that defendant made statements which directly or indirectly meant the plaintiff received bribes from public — Application to amend writ and statement of claim — Whether application bona fide – Whether prejudice caused to other side could be compensated by costs — Whether amendment would in effect turn suit from one character into suit of another and inconsistent character*

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The plaintiff was the member of Penang Municipal Councillor while the defendant was the Malaysian Indian Congress (MIC) Penang Youth Chief. The plaintiff claimed that the defendant had made statements which directly or indirectly or by way of innuendo or otherwise that the plaintiff had received bribes from the public as reported in the online article published on a website which carried a story of a woman who had complained of a Penang Municipal Councillor who had sought and received from her bribe so as to help legalise her recycling business and carrying a photograph of three municipal councillor comprising the plaintiff and two others. The defendant denied that he had made the oral statements to members of the press as alleged in para 3 of the claim or at all. The defendant averred that the plaintiff had failed to identify and set out verbatim the statement which it was alleged that the defendant had uttered. In the present application, the plaintiff applied under O 20 r 5 of the Rules of Court 2012 ('the ROC') for leave to re-amend the amended writ and statement claim. The defendant opposed the application. The issues to be considered were whether the application was bona fide; whether the prejudice caused to the other side could be compensated by costs; and whether the amendment would not in effect turn the suit from one character into a suit of another and inconsistent character.

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Held, allowing the application

I (1) The facts that gave rise to the amendment were known to the defendant or his solicitors much earlier as could been seen from several facts agreed by both parties. Such amendment was not really an unexpected change and it came as a no surprise to the defendant. Thus, the application could

not be construed as an abuse of the process of the court or an afterthought as it did not change the character of the action of which the application was brought (see para 13).

(2) The plaintiff's application was bone fide based on the evidence presented. There was nothing on record to show that the blunder had caused 'injury' to the defendant. Nor had the defendant been able to show that by such amendment, the original suit would be turned into a suit of different and inconsistent character, giving rise to refuse leave to amend (see para 16).

[Bahasa Malaysia summary

Plaintif adalah ahli Majlis Perbandaran Pulau Pinang sementara defendan adalah Ketua Pemuda Pulau Pinang Kongres India Malaysia. Plaintif mendakwa yang defendan telah membuat pernyataan secara terus atau tidak atau melalui sindiran atau sebaliknya bahawa plaintif telah menerima rasuah daripada orang awam seperti yang dilaporkan dalam artikel dalam talian yang diterbitkan di laman sesawang yang menerbitkan cerita mengenai wanita yang telah mengadu mengenai ahli Majlis Perbandaran Pulau Pinang yang telah memohon dan menerima rasuah daripadanya untuk membantu mengesahkan perniagaan kitar semula dan membawa gambar ketiga-tiga ahli majlis perbandaran termasuk plaintif dan dua orang lain. Defendan menafikan bahawa dia telah membuat pernyataan lisan kepada wartawan-wartawan akhbar seperti yang didakwa dalam perenggan 3 tuntutan tersebut. Defendan berhujah bahawa plaintif telah gagal untuk mengenal pasti dan menetapkan betul apa yang dinyatakan yang mana ia didakwa bahawa defendan telah katakan. Dalam permohonan ini, plaintif memohon di bawah A 20 k 5 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk izin meminda semula writ dan pernyataan yang dipinda tersebut. Defendan menentang permohonan tersebut. Isu-isu untuk dipertimbangkan adalah sama ada permohonan adalah bona fide; sama ada prejudis disebabkan kepada pihak satu lagi boleh diberikan pampasan dengan kos; dan sama ada pindaan tidak akan pada hakikatnya mengubah guaman tersebut daripada satu sifat kepada guaman yang lain dan sifat yang tidak konsisten.

Diputuskan, membenarkan permohonan:

(1) Fakta yang membangkitkan pindaan diketahui oleh defendan atau peguamnya terlebih dahulu seperti yang dapat dilihat daripada beberapa fakta yang dipersetujui oleh kedua-dua pihak. Pindaan sedemikian bukan sebenarnya perubahan yang tak dijangka dan ia bukanlah sesuatu yang mengejutkan kepada defendan. Oleh itu, permohonan tidak dapat ditafsirkan sebagai penyalahgunaan proses mahkamah atau sesuatu yang difikirkan semula kerana ia tidak menukar sifat tindakan yang mana permohonan tersebut dibangkitkan (lihat perenggan 13).

(2) Permohonan plaintif adalah suci hati berdasarkan ke atas keterangan

yang dikemukakan. Tidak terdapat apa-apa atas rekod untuk menunjukkan bahawa kesilapan telah menyebabkan '*injury*' kepada defendan. Defendan juga tidak dapat menunjukkan bahawa dengan pindaan sedemikian, guaman asal akan ditukar kepada guaman yang bersifat berbeza dan tidak konsisten, dengan membangkitkan penolakan izin untuk meminda (lihat perenggan16).]

Notes

For cases on amendment, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 722–726.

Cases referred to

Alloy Consolidated Sdn Bhd & Anor v Dato' Dr Hj Adam bin Harun [2011] 5 MLJ 655; [2011] 4 AMR 301, FC (folld)

Cropper v Smith [1884] 26 Ch D 700, CA (refd)

Shahidan bin Shafie v Atlan Holdings Bhd And Anor [2005] MLJU 279 ; [2005] 3 CLJ 793, CA (folld)

Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors [1983] 1 MLJ 213, FC (refd)

Legislation referred to

Rules of Court 2012 O 20 r 5

Simon Murali (Lio & Partners) for the plaintiff.
Kumarathiraviam (Lee Hean Cheng & Co) for the defendant.

Azmi Ariffin JC:

[1] By notice of application dated 7 May 2014 (encl 29) the plaintiff is applying under O 20 r 5 of the Rules of Court 2012 for leave to re-amend the amended writ and statement claim dated 8 October 2013. The defendant oppose the application.

[2] The affidavits filed in respect of the application are:

(a) *affidavit sokongan* of Ong Ah Teong dated 7 May 2014 (encl 30);

(b) *affidavit tambahan* of Ong Ah Teong dated 29 May 2014 (encl 32);

(c) *affidavit jawapan* of Dhinagaran Jayabalan dated 16 June 2014 (encl 33); and

(d) *affidavit balasan* plaintiff dated 1 July 2014 (encl 34).

[3] The brief background of this matter is that the plaintiff is the member of Penang Municipal Councillor whereas the defendant is the Malaysian Indian

Congress ('MIC') Penang Youth Chief. The plaintiff claim that the defendant had on 5 December 2012 made statements which directly or indirectly or by way of innuendo or otherwise that the plaintiff had received bribes from the public as reported in the online article published on the website *www.lmagnews.com* dated 21 December 2012 which carried a story of a woman who had complained of a Penang Municipal Councillor who had sought and received from her bribe so as to help legalise her recycling business and carrying a photograph of three municipal councillor comprising the plaintiff and two others.

[4] The defendant denies that he had made the oral statements to members of the press on 5 October 2012 as alleged in para 3 of the claim or at all. The defendant avers that the plaintiff has failed to identify and set out verbatim the statement which it is alleged that the defendant had uttered on 5 October 2012, if any which is denies.

[5] The defendant further avers that he is neither the author nor the publisher of the said online article published on the website *www.lmagnews.com* on 21 December 2012 and neither did he cause the same to be written nor published.

[6] The plaintiff now seeks leave to make re-amendment to its writ and statement of claim dated 8 October 2012 especially the first line of para 3 to amend the date 5 October 2012 to 11 January 2013 and 19 January 2013. (Note: on 8 October 2013, this honourable court granted the plaintiff leave to amend the pleadings. The amendment was with the consent of the defendant.) The plaintiff application was supported by *affidavit sokongan* (encl 30) sworn on 6 May 2014 by Ong Ah Teong. Reasons given for the amendment is at paras 3 to 9 of the *affidavit sokongan* dated 6 May 2014.

> 3. Saya menyatakan bahawa pindaan semula perlu dibuat kepada baris pertama perenggan 3 Penyataan Tuntutan Dipinda bagi meminda tarikh '5hb Oktober 2012' kepada tarikh 11 Januari 2013 dan 19 Januari 2013
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> 4. Tujuan pindaan semula adalah bagi memperbetulkan satu kesilapan '*clerical*' yang wujud di situ.
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> 5. Kausa tindakan saya muncul daripada pernyataan-pernyataan akhbar yang telah dibuat oleh Defendan pada 11.1.2013 dan 19.1.2013, yang mana kemudian telah diterbitkan dan disiarkan pada 12.1.2013 dan 20.1.2013 dalam beberapa akhbar tempatan, khususnya, 'The Star'.
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> 6. Tiada apa-apa kejadian yang berlaku pada 5.10.2012 yang ada kaitan dengan kausa tindakan saya.
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> 7. Saya sesungguhnya percaya bahawa tarikh tersebut dicatat secara silap oleh kerani peguamcara saya yang dahulu.

8. Malangnya, saya sendiri pun terlepas pandang ('*overlook*') kerana saya lebih menumpukan perhatian kepada keterangan-keterangan yang perlu diberi dalam Mahkamah dan dokumen-dokumen sokongan bagi tujuan bicara.

[7] I take note that the defendant here objected to the proposed amendment to the statement of claim. It is quite obvious to the defendant that the proposed amendment might caused prejudice to the defendant which cannot be compensated by costs as stated by the defendant in his *affidavit jawapan* dated 16 June 2014 (encl 33) which are stated as follows:

memandangkan empat (4) orang saksi Plaintif sudah siap memberi keterangan termasuk sudah diperiksa balas dan plaintif sudah menutup kesnya, maka pastinya untuk membenarkan pindaan yang dipohon ini di peringkat sebegini lewat akan memprejudiskan saya dengan hebat di mana mustahil dapat/mampu di pampas dengan memadai dengan perintah kos.

[8] The Federal Court in *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213 had laid down guidelines applicable when amendments to the pleadings are applied for. The court said that (at pp 214–215):

The general principle is that the court will allow such amendment as will cause no injustice to the other parties. Three basic questions should be considered to determine whether injustice would or would not result:

(a) whether the application is bona fide;

(b) whether the prejudice caused to the other side can be compensated by costs;

(c) whether the amendment would not in effect turn the suit from one character into a suit of another and inconsistent character.

[9] If all the answers are in the affirmative, the application should be allowed.

[10] At this stage it is important for me to set out the relevant contents of the *affidavit jawapan* sworn by Dhinagaran Jayabalan dated 16 June 2014 (encl 33) to determine whether the objection raised has any basis for consideration.

4. Saya terlebih dahulu menyatakan bahawa tarikh '5.10.2012' yang diplidkan oleh Plaintif pada perenggan 3 Pernyataan Tuntutan asal Plaintif bertarikh 8.3.2013.

5. Saya sesungguhnya menegaskan bahawa, Plaintif sudah pun meminda Pernyataan Tuntutan asalnya tersebut sekali sebelum ini dan justeru itu telah memfailkan Pernyataan Tuntutan Dipinda yang di tarikh semula pada 8.10.2013 dengan mengandungi beberapa pindaan fakta yang '*substantial*'.

6. Justeru itu, ini adalah permohonan kali ke-2 untuk meminda Pernyataan tuntutan asal Plaintif tersebut.

7. Kausa tindakan Plaintif terhadap saya dalam tindakan ini adalah fitnah berbentuk lisan (*slander*) yang didakwa kononnya dinyatakan/dituturkan dalam suatu persidangan akhbar yang kononnya dianjurkan oleh saya pada 5.10.2012. Malah, merujuk kepada persidangan akhbar pada 5.10.2012 tersebut secara spesifik, Plaintif telah memplidkan ia sebagai '*Kenyataan yang diadukan tersebut*'.

8. Saya sesungguhnya dinasihati dan percaya bahawa, selaku suatu kausa tindakan fitnah berdasarkan '*slander*'. bila, masa, di mana dan bagaimana kenyataan yang diadukan tersebut dibuat adalah maha penting. Dalam konteks ini, Plaintif telah dengan jelas dan yakin mengenal-pasti bahawa 5.10.2012 adalah tarikh kenyataan yang diadukan tersebut telah kononnya dibuat oleh saya.

9. Dalam erti kata lain, penegasan fakta bahawa kononnya kenyataan yang diadukan tersebut dibuat oleh saya pada 5.10.2012 telah dibuat oleh Plaintif dengan penuh kesedaran.

10. Tidak mungkin atau pastinya tarikh 5.10.2012 yang diplidkan oleh Plaintif pada perenggan 3 Pernyataan Tuntutan Dipinda nya bukan suatu kesilapan '*clerical*' yang telah terlepas pandang oleh bekas peguamcara Plaintif berdasarkan alasan-alasan berikut:

(i) Ini adalah di antara keterangan bersumpah yang diberi oleh Plaintif di Mahkamah semasa perbicaraan pada 10, 11 dan 24.4.2014:

* Saya berpegang teguh kepada semua kandungan Pernyataan Tuntutan Dipinda saya dan semua fakta yang diplidkan di situ;

* Setuju, dalam kes fitnah pernyataan yang diadukan adalah penting;

* Fakta bahawa, bila kenyataan yang diadukan tersebut dibuat adalah penting.

* Fakta bahawa, kepada siapa kenyataan yang diadukan tersebut adalah penting.

* Pindaan pada Pernyataan Tuntutan asal saya pada 8.10.2013 adalah atas arahan saya; dan

* Saya baca Pernyataan Tuntutan asal saya bertarikh 8.3.2013 dan arahkan peguamcara saya untuk buat pindaan seperti yang di tarikh semula pada 8.10.2013.

Berdasarkan keterangan-keterangan Plaintif sendiri di atas, adalah mustahil tarikh 5.10.2012 yang diplidkan tersebut adalah kesilapan '*clerical*';

(ii) Plaintif mendakwa bahawa, tarikh 5.10.2012 tersebut kononnya telah dicatat secara silap oleh kerani peguamcara terdahulunya. Namun, pindaan pada 8.10.2013 terhadap Pernyataan Tuntutan asal Plaintif tersebut telah dibuat oleh peguamcara terkini Plaintif. Adakah ini bermaksud kerani peguamcara terkini Plaintif juga sekali lagi turut melakukan kesilapan yang sama dengan terlepas pandang perkara yang sama?; dan

(iii) Seperti Mahkamah sedia maklum daripada keterangan bersumpah Plaintif di Mahkamah bahawa, di samping dirinya dua (2) lagi Ahli Majlis Perbandaran Pulau Pinang iaitu masing-masing Tahir Jalaluddin bin Hussain dan Prem

Anand a/l Loganathan juga turut membawa tindakan undang-undang terhadap saya untuk fitnah kononnya berdasarkan persidangan akhbar yang sama. Dalam Guaman sivil No. 22NCVC-128-03/2013 yang di bawa oleh Prem Anand a/l Loganathan terhadap saya untuk kausa tindakan yang sama dan yang difailkan oleh suatu lagi firma guaman yang lain, juga telah diplidkan di situ bahawa, pernyataan berfitnah yang diadukan adalah kononnya menerusi persidangan akhbar saya pada 5.10.2012. Persoalannya, bagaimana dua (2) orang kerani berbeza daripada dua (2) firma guaman yang berlainan boleh melakukan kesilapan '*clerical*' yang mirip (*identical*) dengan memilih tarikh 5.10.2012 yang sama? Sesalinan bermeterai Writ Saman Dipinda dan Pernyataan Tuntutan Dipinda bertarikh semula pada 8.10.2013 tersebut kini dilampirkan dan ditandakan sebagai Ekshibit 'DJ-1'.

16. Merujuk kepada perenggan 15 Afidavit Sokongan tersebut, saya mengaku ada menganjurkan persidangan akhbar pada 11.1.2013 dan 19.1.2013. Tetapi, pengakuan ini tidak bermaksud Plaintif boleh dilepaskan daripada bebannya untuk membuktikan kononnya kenyataan yang diadakan tersebut dibuat pada 5.10.2012.

[11] For ease of reference, let us have a closer look at the *affidavit balasan* sworn by Ong Ah Teong dated 1 July 2014 (encl 34) so that we will not be out of place.

3. Saya menafikan kandungan perenggan 3 Afidavit Jawapan Defendan dengan setegas-tegasnya. Saya menyatakan bahawa bantahan awal Defendan ini adalah tidak relevan sama sekali kerana kedua-dua pihak telah bersetuju bahawa permohonan Plaintif ini akan dipertikaikan dari segi merit kes sahaja dan tiada bantahan dari segi teknikal yang akan dibangkitkan. Sesalinan surat daripada peguamcara Plaintif bertarikh 16.06.2014 dilampirkan di sini dan ditandakan sebagai Ekshibit 'E'

5. 5.1. Saya menegaskan bahawa 'kenyataan yang diadukan tersebut' yang dinyatakan di perenggan 3 Pernyataan Tuntutan Dipinda sebenarnya merujuk kepada pernyataan-pernyataan akhbar yang telah dibuat oleh Defendan pada 11.01.2013 dan 19.01.2013 masing-masing.

5.2. Saya menyatakan bahawa tarikh 5.10.2012 yang dinyatakan di perenggan 3 Pernyataan Tuntutan Dipinda merupakan satu kesilapan perkeranian yang hanya didapati semasa ditanya oleh peguamcara Defendan di prosiding Mahkamah.

6. 6.3. Saya menegaskan bahawa pihak Defendan sendiri tahu kausa tindakan saya adalah berkenaan pernyataan yang Defendan buat dalam bidang akhbar pada 11.01.2012 dan 19.01.2013 masing-masing.

6.5. Saya menyatakan bahawa pihak Defendan kini cuba mengambil kesempatan untuk memperbesarkan kesilapan ini, pada hal beliau langsung tidak diprejudis dalam pindaan semula yang dicadangkan tersebut.

6.6. Ini boleh dibuktikan melalui Fakta-Fakta Dipersetujui dan isu-isu untuk dibicarakan yang telah difailkan, di mana tiada di mana-mana pun tarikh 5.10.2012 dibangkitkan. Pohon rujuk kepada Ekshibit 'B' dan 'C' Affidavit Sokongan tersebut.

6.7. Ini menunjukkan bahawa sejak awal lagi Defendan tahu bahawa kausa tindakan saya adalah berlandaskan pernyataan yang telah Defendan buat pada 11.01.2012 dan 19.01.2013.

7. 7.1. Saya menyatakan bahawa kedua-dua pihak adalah terikat kepada Fakta-Fakta Dipersetujui dan isu-isu untuk Dibicarakan yang mana kandungannya telah dipersetujui oleh peguamcara saya dan peguamcara Defendan.

7.2. Saya menyatakan bahawa seandainya tarikh 5.10.2012 tersebut amat penting dan material, mengapakah Defendan tidak menyatakan tarikh tersebut dalam Fakta-Fakta Dipersetujui dan Isu-isu untuk Dibicarakan, dan hanya membangkitkan isu ini semasa dalam prosiding Mahkamah yang Mulia ini.

7.3. Saya menyatakan bahawa niat Defendan berbuat demikian adalah amat mencurigakan dan merupakan satu fikiran terkemudian.

[12] Having considered the proposed re-amendment, the affidavits of both parties, written submission of counsel and the applicable law governing amendment of pleadings, it is clear to me the facts that giving rise to the amendment were known to the defendant or his solicitors much earlier as can been seen from several facts agreed by both parties.

(1) agreed facts dated 13 November 2012 (encl 30 exh B - *affidavit sokongan* defendant dated 7 May 2014). Never in the agreed fact mentioned about the controversy date in question ie 5 October 2010

(2) issue to be tried was filed on 14 November 2013 (encl 30 exh C - *affidavit sokongan* defendant dated 7 May 2014). The statement of issues also makes no mention of any event as 5 October 2012.

(3) it is an undisputed fact that the press conferences held by the defendant, in which the defamatory statements were made, were on 11 January 2013 and 19 January 2013 respectively. The defendant did not hold any press conference on 05 October 2012.

(4) the error in the statement of claim was only brought to the plaintiff's attention when the plaintiff was cross-examined by defendant's solicitors during the trial.

[13] Taking that as a consideration, I do find that such amendment was not really an unexpected change and it came as a no surprise to the defendant. Thus the application in encl 29 cannot be construed as an abuse of the process of the court or an afterthought as it does not change the character of the action of which the application is brought.

[14] The defendant submitted that the 'clerical' mistake said to be done by the plaintiff solicitors clerk and overlooked by the previous solicitors was a reason which is hard to be believed. Furthermore it was argued by the defendant that the date was in fact pleaded by the plaintiff with full

consciousness and therefore plaintiff was bound by the facts pleaded.

[15] Having perused the matter carefully, it is trite law that parties are bound by their pleadings and sworn evidence given in court. It should be noted that an application for amendment of a writ or pleadings is not as a matter of a right of a party but is left to the judicial discretion of the court depending on the circumstances of each case. The mere fact that the delay may be capable of being compensated in money is not conclusive of the question whether the amendment should or should not be permitted. Leave to amend the pleadings may be given at any stage of the proceeding if such amendment is necessary in order to do justice. Therefore the court will always act prudently in determining whether an amendment ought to be allowed as long as the court is satisfied that the application made was sincere and genuine based upon facts and evidence presented before it, in accordance with the procedure adopted in court of law.

[16] Initially, I was also doubtful of the reason given by the plaintiff that the proposed amendment was due to the clerical mistake done. But after taking into account the whole chronology of event that had happened, I am in no hesitation that the plaintiff application was bone fide based on the evidence presented. There is nothing on record to show that the blunder had caused 'injury' to the defendant. Nor have the defendant been able to show that by such amendment, the original suit would be turned into a suit of different and inconsistent character, giving rise to refused leave to amend.

[17] To my mind, the proposed amendment was in line with the content of the document marked 'B' and 'C' as exhibited in encl 30, and it concerned the same parties, same facts and arose out of the same subject matter. Order 20 r 5(5) provides:

> An amendment may be allowed under para 2 notwithstanding that the effect of the amendment will be add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

[18] The final contention raised by the defendant which need consideration is whether the proposed amendment can be done or allowed at this stage of the proceeding particularly after four witnesses for the plaintiff had testified and plaintiff had closed its case. According to the defendant this might caused prejudice to him that cannot be compensated by costs.

[19] It is well established principle that if the proposed amendment is due to fault or mistake by the plaintiff solicitors clerk or served to clarify the plaintiff claim with greater detail or expand within permitted limits, then however late

the application for leave to make such amendment may have been, the application should, in general be allowed, provided it will not prejudice the defendant. But if the proposed amendments will cause harm to the defendant which cannot be remedied by a suitable order as to costs, then such application should be refused.

[20] The object of the court is to decide the right of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their right. I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. The court do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace. (per Brown LJ in *Cropper v Smith* [1884] 26 Ch D 700, at pp 701–722.)

[21] I hereby proposed to adopt what was said by Gopal Sri Ram (as he then was) writing for the Court of Appeal in the case of *Shahidan bin Shafie v Atlan Holdings Bhd And Anor* [2005] MLJU 279; [2005] 3 CLJ 793, CA, went he had this to say:

> Now, this is a case where by permitting the Plaintiff to amend his summons, the Defendants will suffer no prejudice or harm that cannot be remedied by a suitable order as to costs. They will still have their day in court. And they might even succeed again. But consider for a moment the Plaintiff's position. He will forever be shut out from his chance at receiving justice. Therefore weighing these two opposing factors on a balance, I find the tilt to be in the Plaintiff's favour. The suggestion that the court is here rushing to the assistance of the Plaintiff is completely misconceived. All that we are doing is meeting out justice according to the substantial merits of the case without regard to technicalities. And that, I think, is why we exist as a constitutional institution.

[22] Finally, in the Federal Court case of *Alloy Consolidated Sdn Bhd & Anor v Dato' Dr Hj Adam bin Harun* [2011] 5 MLJ 655; [2011] 4 AMR 301 (FC), Arifin Zakaria CJ (Malaya) (as the Honourable Chief Justice then was) articulated the guiding principle in these terms:

> Generally, the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and or such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.
>
> The rule permits amendments at any stage and it does not matter whether the original omission arose from negligence or carelessness, but such amendments are allowed only when the occasion of injury and cause no injustice to the opposite party or where they can be sufficiently compensated by costs or other terms imposed by the court.

[23] For the abovementioned reasons, I find that there are basis in the plaintiff application and hence, I allowed the application in encl 29. As this is the second application to amend the statement of claim, in the interest of justice, I hereby order the plaintiff to pay cost of RM3,000 to the defendant. The plaintiff to file amended statement of claim within 14 days from the date of this order. The date for case management for encl 29 is fixed on 16 October 2014 before the senior assistants registrar.

Application allowed.

Reported by Afiq Mohamad Noor